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IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-2

In the Interest of JOHN M. VITALE, a minor,

(STATE OF ILLINOIS,

Petitioner,

vs.

JOHN M. VITALE,

Respondent.)

BRIEF OF RESPONDENT IN OPPOSITION

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REASONS FOR DENYING THE WRIT

I.

THE ILLINOIS SUPREME COURT BASED ITS DECISION UPON AN ADEQUATE AND INDEPENDENT STATE GROUND.

The Illinois Supreme Court, in affirming the result reached in this case by the Appellate Court of Illinois, First District, held that subsequent prosecution of the minor, John M. Vitale, for involuntary manslaughter,

was barred under the compulsory joinder provisions of the Illinois Criminal Code, after the minor had been tried and convicted in traffic court for failing to reduce speed to avoid an accident.

In the majority opinion below, Mr. Justice Dooley of the Illinois Supreme Court, states: (see Petitioner's Appendix A)

> "Does the traffic offense for which respondent was tried and convicted, failure to reduce speed to avoid an accident, prohibit a subsequent prosecution for the manslaughter offenses? In our discussion of the broad issue *we shall consider our Criminal Code of 1961* (Ill. Rev. Stat. 1973, ch. 38, par. 9-1 *et seq.*) as well as the double jeopardy clause of the Federal Constitution."

Mr. Justice Dooley goes on to examine sections 3-3 and 3-4 of the Illinois Criminal Code relating to joinder of offenses and concludes as follows: (see Petitioner's Appendix A)

> "The Appellate Court was likewise of the opinion that the State's Attorney's office had knowledge of the deaths when the traffic charge was prosecuted. Thus, *all the requirements of Section 3-3(b) were met so as to bar subsequent prosecution.*

Quite clearly and succinctly, the Illinois Supreme Court did decide the issue herein on independent and separate statutory grounds. This holding was also consistent with the trial court's reasons for dismissing the delinquency petition after ruling on respondent's written motion entitled, *"Motion For Discharge Due to Violation of Statutory Or Constitutional Double Jeopardy."* Thus, it can be seen that from the outset, respondent has specifically alleged violation of his rights under the Illinois Statutes as well as the Federal Constitution. The trial court, the Appellate Court and

the Illinois Supreme Court have all found and held that the compulsory joinder provisions *alone* (Illinois Criminal Code) barred further prosecution of respondent for involuntary manslaughter once he had been tried and convicted on the lesser traffic charge of failure to reduce speed to avoid an accident. The present case does not, therefore, merit the Court's review since the Illinois Supreme Court decided it on an adequate and independent state ground.

II.

IN INTERPRETING AND APPLYING THE PERTINENT ILLINOIS STATUTES TO THE CASE AT BAR, THE ILLINOIS SUPREME COURT CONCLUDED THAT THE OFFENSE OF FAILURE TO REDUCE SPEED IS A LESSER INCLUDED OFFENSE OF THE OFFENSE OF INVOLUNTARY MANSLAUGHTER; UNDER THE DOUBLE JEOPARDY CLAUSE, TRIAL AND CONVICTION ON THE LESSER CHARGE PRECLUDED PROSECUTION IN A SEPARATE ACTION FOR THE GREATER OFFENSE.

After having first affirmed this case under the aforementioned compulsory joinder clause of the Illinois Criminal Code, the Illinois Supreme Court did find an additional reason why respondent could not be prosecuted for the offense of involuntary manslaughter, and that was that respondent had the constitutional right to be free from being twice placed in jeopardy for the same offense.

In order for the Illinois Supreme Court to arrive at this additional finding, however, an examination of the Illinois statutes defining involuntary manslaughter and failure to reduce speed was made and articulated in the Court's opinion by Mr. Justice Dooley. (See pages A-6 and A-7 of petitioner's brief.)

In comparing these two statutes, the Court concluded: (see A-8 of petitioner's brief)

> "As is usually the situation between greater and lesser included offenses, the lesser offense, failure to reduce speed, requires no proof beyond that which is necessary for the greater, involuntary manslaughter. Accordingly, for purposes of the double jeopardy clause, the greater offense is by definition the 'same' as the lesser offense included within it."

Contrary to the People's argument, the Illinois Supreme Court did not attempt to expand the protections of the double jeopardy clause. What the Court did was to interpret the two Illinois statutes in question as they applied to the facts of this particular case. Having concluded as a matter of fact that these two separate statutory offenses, failure to reduce speed and involuntary manslaughter, were, in this case, the "same" for the purposes of the double jeopardy clause, the Court found that the trial and conviction on the lesser charge precluded prosecution in a separate action on the greater offense. Applying the double jeopardy clause to this case, the Court cited *Brown v. Ohio*, 432 U.S. 161 (1977):

> "The Double Jeopardy Clause is not such a fragile guarantee that prosecutors can avoid its limitations by the simple expedient of dividing a single crime into a series of temporal or spatial units."

This finding of the Illinois Supreme Court was based on its interpretation of its own statutes. The application of the double jeopardy clause necessarily followed as a matter of law.

The Illinois Supreme Court's construction of these two statutes as being greater and lesser included offenses is

yet another ruling on an independent state ground. It is the final authority in interpreting Illinois statutes and, as here, once it determined the offenses in question were the "same" for purposes of this case and the double jeopardy clause, the resultant conclusion that respondent could not be placed on trial twice for the "same offense" was consistent with a line of Supreme Court opinions, *Brown v. Ohio*, 432, U.S. 161 (1977); *Waller v. Florida*, 397 U.S. 387 (1970); *Ashe v. Swenson*, 397 U.S. 436 (1970).

III.

THE STATE'S PETITION IS IMPROPER IN ATTEMPTING TO ARGUE THE MERITS OF THIS CASE BY REFERENCE TO A POLICE REPORT.

Although there was a plea of *not* guilty and a full trial and conviction of respondent on the traffic charge of failure to reduce speed, no transcript of that trial was made. This fact, however, has not inhibited the State from attempting to argue the merits of the instant case by constantly referring to and relying on a police report as the factual basis for this case, as though it were tried and true evidence.

The People suggest, on the basis of raw hearsay—the police report, that facts not in the record and which have not been tested by the rules of evidence, be accepted as a part of the record before this Court. Rather than detail each of these improprieties in the People's brief, it should simply be pointed out that, in every instance where they make statements purporting to represent the facts of this case, they are relying solely on the police report. This only clouds the real issues before this Court.

CONCLUSION

For these reasons, the petition for certiorari to the Illinois Supreme Court should be denied.

Respectfully submitted,

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